IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appln. No. 742 of 2005

Babu Lal S/o Bal Dev
R/o Village Sisaiya (Melaghat)
P.S. Khatima, Distt. Udham Singh Nagar
…… Applicants

Versus

1. State of Uttaranchal
2. Division Forest Officer,
   Tarai East, Division Haldwani
   Nainital.
3. Forest Ranger / Range Officer,
   Forest Range, Khatima, Tarai East
   Forest Division, Haldwani,
   Nainital. ……. Respondents

Mr. K.S. Bora, Advocate for the Applicants.
Mr. H.C. Pandey, Asstt. Govt. Advocate for the State.

Hon. Prafulla C. Pant, J.

This petition is moved under Section 482 of the Code of Criminal Procedure, 1973 for quashing of summoning order of accused in criminal case Nos. 536 of 2004 and 537 of 2004 arising out of the Range case No. 21 / Khatima / 2003-04 and Range case No. 18 / Khatima / 2003-04.

2. Heard learned counsel for the parties.

3. Learned counsel for the applicant / petitioner submitted that he is in lawful occupation of Khasra No. 165 in Village Sisaiya Melaghat, District Udham Singh Nagar. In Writ Petition No. 1770 of 2001, a Division Bench of this Court has directed that the petitioner shall not be evicted from the said land except in accordance with law. However, on perusal of the complaint of Range case No. 18 / Khatima / 2003-04 and Range case No. 21 / Khatima /

2003-04, it appears that the criminal cases under Section 26 of the Forest Act have been filed for illegal feeling of trees by the petitioner and some other persons. Learned counsel for the petitioner argued that the petitioner is being harassed by filing alleged false cases. In its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, this Court cannot go into that fact whether the petitioner ahs actually cut the trees illegally, as alleged in the complaint or not. The complaints are made by the public servants against the petitioner and some other accused persons. It is for the trail court to see, whether the offence has been made out against the accused persons or not after the evidence is adduced by the parties.

4. In the opinion of this Court, it is not a fit case in which the proceedings can be quashed under Section 482 of the Code. Therefore, the petition is liable to be dismissed. The petition is dismissed without prejudice to the rights of the petitioner in respect of the pleas open to him in his defence before the trial court.

5. The urgency application No. 1326 of 2005 also stands disposed of.

(Prafulla C. Pant, J.)

Dt. 19th December, 2005.
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